

## **REMARKS**

### **I. Status of Claims.**

This application has been reviewed in light of the Office Action dated May 4, 2005. Claims 1-19 are pending in the application. By the present amendment, claims 1, 4, 5, 9, 14, 17 and 19 have been amended in a manner, which is believed to overcome the rejections in the Office Action. Claim 20 has been added to further emphasize Applicant's invention. Support for claim 20 can be found generally throughout the specification, drawings and originally filed claims and in particular on page 8 lines 4-14. No new matter has been added by way of the above amendments.

### **II. Claims 1-3, 5, 6, 8, 10-13, and 15-19 rejected under Double Patenting.**

Rejection was made to claims 1-19 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,228,074. The Applicant would suggest that the claimed subject matter of the rejected claims differs from that of claims 1-12 of U.S. Patent No. 6,228,074. However, in order to facilitate the passage of the instant application to allowance the Applicant has executed an appropriate terminal disclaimer in compliance with 37 CFR 1.321 (c), which is attached to this response.

### **III. Claims 9,14 and 19 rejected under 35 USC 112.**

The Examiner rejected claims 9, 14 and 19 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. Applicant has amended the claims to further emphasize and define his invention and respectfully requests that this rejection be withdrawn.

**IV. Claims 1-3, 13 and 14 rejected under 35 USC 102(b).**

The Examiner further rejected claims 1-3, 13 and 14 under 35 USC 102 (b) as being anticipated by Eckhouse U.S. Patent No. 5,620,478 (“Eckhouse”). The Examiner states that Eckhouse discloses a method and apparatus for treating dermatological conditions. According to the Examiner, Eckhouse discloses the following method consisting of placing a hollow light reflector over/against a skin section, thereby forming a seal to contain the light; generating a light from a flashlamp that has a specific wavelength output and intensity; filtering the light through light filters to eliminate unwanted segments of the light; and illuminating the skin section by directing the light through the filters.

Unlike the instant claimed invention as amended, Eckhouse uses a single lamp having a elliptical based polished reflector to focus the light onto the skin. The instant device uses diffuse reflecting material that inherently does not have a focal point. The light of Applicant’s claimed invention, as amended, is “generated from multiple flashlamps” and reflects in all directions in the reflective chamber until it exits the light guide. generating a light that has a specific wavelength distribution pattern output and intensity.

Contrary to Applicant’s claimed invention, Eckhouse requires the use of optical and neutral density filters to control light spectrum and intensity. These filters within the device of Eckhouse are changed to manipulate the light characteristics for different treatments. The Applicant’s device has a spectral distribution pattern of multiple flashlamps thereby rendering filter changing unnecessary for different treatment uses.

Most importantly, the method of Eckhouse requires cooling of the treatment area prior to irradiation. The instant device does not cool the treatment area. The pulsing of light of the instant device utilizes the physics of thermal relaxation time to prevent damage to the skin of the treatment area rather than the need to cool the treatment area, as required in Eckhouse. The water-cooling component of the instant device is only for cooling of the multiple flashlamps and not the treatment area.

Contrary to the instant invention, the wavelength distribution output of Eckhouse as shown in FIG. 17 and column 5, lines 24-25 is different than the wavelength output of the Applicant's device as shown in FIG. 6A.

Further, as has been clearly enunciated by the Federal Circuit, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Lindermann Maschinenfabrik GMBH v. American Hoist and Derrick Co., 221 USPQ 481, 485 (Fed Cir. 1984). In the instant case the requirement of showing each and every element of Applicant's claimed invention to support anticipation has not been met. Furthermore, the cited reference fails to disclose or suggest those features claimed within Applicant's instant application. Thus, Applicant respectfully submits that the claims as pending in the application are patentably distinct over the cited references and withdrawal of this rejection based upon 35 USC 102 (b) is respectfully requested.

**VI. Rejected of claims 4-12 and 15-19 under 35 USC 103(a).**

Further rejection was made to claims 4-12 and 15-19 under 35 USC 103 (a) as being unpatentable over Eckhouse in view of Braunt et al. U.S. Patent No. 5,425,754 ("Braunt") and in view of Changaris U.S. Patent No. 5,282,842 ("Changaris").

The Examiner suggests that although Eckhouse discloses a method of cooling the skin, Eckhouse does not particularly use water to provide the cooling and while Eckhouse uses a flashlamp to generate the treatment light, he does not use multiple flashlamps simultaneously.

As noted above and distinguished from Eckhouse, the instant device uses multiple flashlamps and does not cool the treatment area. The Examiner further suggests that Braunt discloses the cooling of the treatment area with a water-cooling system and that Changaris discloses an apparatus having multiple flashlamps. Therefore, it would have been obvious to modify Eckhouse in view of Braunt and Changaris arriving at the Applicant's invention. The Applicant respectfully traverses this rejection.

The disclosure of Eckhouse has been discussed and distinguished above. Braunt discloses a method for treating dermatological conditions by simultaneously irradiating the skin and cooling the treatment area with a water cooling system. Applicant's device does not cool the treatment area but rather as discussed above uses the physics of thermal relaxation of pulsed light to prevent damage to the skin of the treatment area. The water cooling of the instant device cools the flashlamps and not the treatment area.

Changaris discloses a method for using multiple bulbs to fire simultaneously or consecutively. The apparatus of Changaris, however, is for a tanning bed and it does not remotely suggest the instant device. Applicants claimed invention, utilizes multiple flashlamps to produce controlled irradiation to treat various dermatological conditions. Contrary to Applicants claimed invention, Changaris uses multiple bulbs to cover the large area needed to tan a human body. The instant device uses high intensity multiple flashlamps in a small reflective chamber to create the extremely high optical energy

necessary for treatment of dermatological conditions. In a further illustrative embodiment claimed within claim 4 and 17 and its dependant claims 18-20, the treatment light is augmented with “a laser rod inserted into the delivery head for single wavelength light infusion into said light output.” None of the references cited suggest a “single wavelength light infusion into said light output” as Applicant has disclosed and claimed.

Unlike Changaris, the multiple lamps in the instant device are not used to provide treatment light with multiple wavelengths. The wavelength distribution pattern of the Applicant’s multiple lamps are substantially identical. The multiple flashlamps are used to increase the output energy that is not possible with a single flashlamp.

The combination of Eckhouse, Braunt and Changaris that the Examiner makes in an attempt to arrive at the Applicant’s claimed invention is neither taught nor suggested by the references, alone or in combination. The differences in the features of each reference as discussed above, alone or in combination, do not arrive at the Applicant’s invention nor do they contain “sufficient impetus” or teachings to support the combination that the Examiner makes to effect the obviousness rejection. Applicant respectfully submits that the combination the Examiner makes to arrive at the Applicant’s invention, rather than making the Applicant’s invention obvious, actually teaches away from the Applicant’s claimed invention, as the combination of these references suggests the need to cool the treatment area.

Since the combination disclosed and claimed within the instant application is not found in any combination of Eckhouse, Braunt or Chargaris, it is fair to assume that in raising the obviousness rejection, the Examiner gleaned knowledge from the Applicant’s disclosure contrary to well-established legal principles. Applicant respectfully requests

that the rejected claims be favorably reconsidered in light of well-established legal principles, which provide,

*"That one skilled in the art is not synonymous with obviousness....  
That one can reconstruct and/or explain the theoretical mechanism of an  
invention by means of logic and sound scientific reasoning does not afford  
the basis for an obviousness conclusion unless that logic and reasoning  
also supplies sufficient impetus to have led one of ordinary skill in the art  
to combine the teachings of the reference to make the claimed invention"  
Ex parte Levengood, 28 USPQ 2d 1300 (Bd. Pat. App. & Inter. 1993).*

Since the particular combination of the cited references, which the Examiner makes in an attempt to arrive at the Applicant's invention, is neither taught nor suggested by the references, Applicant respectfully requests that this rejection be withdrawn.

The Examiner further suggests regarding claim 14 that it is known in the art to make UV producing flashlamps from quartz. The Applicant respectfully traverses this rejection. This rejection is misplaced. Claim 14, which depends from claim 1, is patentable over the cited references from reasons set forth above. Further claim 14 of the instant application is directed to the method according to claim 1 "wherein said light spectral output pattern is generated at a pulse firing for dermatological lesion pre/post heating." Applicant respectfully requests that this rejection be withdrawn.

**CONCLUSION**

Accordingly, it is believed that in view of the above remarks and amendments, all claims are in condition for allowance, and therefore reconsideration and allowance are earnestly solicited. If the Examiner feels that a telephone conference would expedite prosecution of this case, or resolve any remaining issues, the Examiner is invited to contact the undersigned at (617) 856-8238.

By: 

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